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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

7 PROTECT OUR GIRLS, a Committee for  
8 Political Action (PAC) Advocating Passage,  
and MELISSA CLEMENT, an individual,

Plaintiffs,

v.

11 BARBARA CEGAVSKE in her official  
12 capacity as Nevada Secretary of State,  
13 JOSEPH P. GLORIA in his official capacity as  
14 Clark County Registrar of Voters, DEANNA  
15 SPIKULA in her official capacity as Washoe  
16 County Registrar of Voters, KRISTINA  
17 JAKEMAN in her official capacity as Elko  
18 County Clerk, SADIE SULLIVAN in her  
19 official capacity as Lander County Clerk,  
20 LACEY DONALDSON in her official capacity  
21 as Pershing County Clerk-Treasurer,  
22 VANESSA STEVENS in her official capacity  
23 as Storey County Clerk-Treasurer, NICHOLE  
24 BALDWIN in her official capacity as White  
25 Pine County Clerk, SANDRA MERLINO in  
26 her official capacity as Nye County Clerk,  
27 TAMMI RAE SPERO in her official capacity  
as Humboldt County Clerk, KATHY LEWIS  
in her official capacity as Douglas County  
Clerk-Treasurer, LINDA ROTHERY in her  
official capacity as Churchill County Clerk-  
Treasurer, LACINDA ELGAN in her official  
capacity as Esmeralda County Clerk-Treasurer,  
LISA C. LLOYD in her official capacity as  
Lincoln County Clerk, LISA HOEHNA in her  
official capacity as Eureka County Clerk,  
CHRISTOPHER NEPPER in his official  
capacity as Mineral County Clerk-Treasurer,  
NIKKI BRYAN in her official capacity as  
Lyon County Clerk-Treasurer, and AUBREY  
ROWLATT in her official capacity as Carson  
City Clerk-Recorder,

Defendants.

Case No. 3:20-cv-00515-MMD-WGC

**MOTION FOR PRELIMINARY  
INJUNCTION**

1  
2 Plaintiffs Protect Our Girls, a Committee for Political Action (PAC) Advocating Passage,  
3 and Melissa Clement, an individual (collectively “Plaintiffs”), by and through their undersigned  
4 counsel, respectfully move this Court, pursuant to Federal Rule of Civil Procedure 65 for a  
5 Preliminary Injunction enjoining Defendants from requiring Plaintiffs to collect the necessary  
6 signatures by the time prescribed in NRS 295.056(2), November 18, 2020, and instead, extending the  
7 time to collect the signature and file the Initiative with the Secretary of State no less than 30 days  
8 prior to the start of the 2021 Nevada Legislative session. This Motion is based upon the following  
9 Memorandum of Points and Authorities, the Complaint, the Declaration of Melissa Clement and  
10 exhibits thereto which is filed concurrently herewith, the pleadings and papers on file herein, and  
11 such other evidence and argument as the Court may allow.

12 **I. INTRODUCTION**

13 This action arises out of Protect Our Girls proposal to amend an existing state law through a  
14 Statewide Statutory Initiative Petition, S-04-2020 (“Initiative”) that was initiated on March 11, 2020.  
15 This initiative will prohibit a physician from knowingly performing an abortion upon a minor unless:  
16 (1) a custodial parent or guardian of the minor is notified prior to the abortion (“parental notification  
17 requirement”); or (2) upon the petition of the minor, a Nevada court authorizes the abortion without  
18 parental notification (“judicial bypass”). Presently, a pregnant minor in the state of Nevada can get  
19 an abortion without parental notification or authorization by a court. The Nevada legislature passed a  
20 parental notification requirement in 1985, but the law was never enforced because a federal court  
21 found that its judicial bypass portion was not written appropriately. This initiative addresses this by  
22 rewriting the expedited judicial bypass schedule. It also amends law to enhance the protection of the  
23 minor’s privacy. The amended law provides that a Nevada court may authorize an abortion for a  
24 minor without parental notification if the court finds that the minor is sufficiently mature and capable  
25 of giving informed consent to the proposed abortion or that the performance of an abortion on the  
26 minor without notification of a custodial parent or guardian would be in the minor’s best interests.

27 Since the Initiative was filed, however, the Covid-19 pandemic (“Pandemic”) has gripped the  
28 State of Nevada and this Country. In response, all levels of the government have issued social

1 distancing requirements and stay-at-home directives that continue to preclude the interpersonal  
2 contact necessary to gather signatures to qualify the Initiative, and other initiatives seeking to be  
3 placed before the voters or the Nevada Legislature for action.

4 In recognition of this difficulty, Protect Our Girls requested relief from the Secretary of State  
5 (the “Secretary”), Nevada’s chief elections officer. *See* Melissa Clement Declaration in Support of  
6 Plaintiff’s Motion for Preliminary Injunction “Clement Decl.” at Exhibit 1. Protect Our Girls  
7 requested that the Secretary extend the deadline for submitting the Initiative for verification  
8 (November 18, 2020) six (6) weeks to December 29, 2020. *Id.* The Secretary refused, indicating she  
9 was “unaware of any authority under Nevada law by which the Secretary of State can modify the  
10 requirements of NRS 295.056 regarding the petition submission deadline. Clement Decl. Ex. 2. The  
11 Secretary refused notwithstanding the fact that she previously ordered that Nevada’s June 9, 2020  
12 primary would be conducted by all mail contrary to certain written requirements of Nevada election  
13 law. Additionally, the Secretary refused notwithstanding the fact that she, and every other County  
14 Election Office, entered a Consent Decree allowing an extension of the deadline to submit an  
15 initiative for verification on June 9, 2020, some eighty-eight (88) days before rejecting Protect Our  
16 Girls request. Clement Decl. Ex. 3, *see also See Fair Maps Nevada v. Cegavske*, Case No. 3:2020-  
17 cv-00271 (ECF 48).

18 Additionally, this Court recently held that such action was valid under the Secretary’s  
19 authority pursuant to NRS 293.247(4), which provides that the Secretary may, in connection her  
20 duties as chief election officer, “provide interpretations and take other actions necessary for the  
21 effective administration of the statutes and regulations governing the conduct of primary, general,  
22 special and district elections in this State.” *Paher v. Cegavske*, No. 3:20-CV-00243-MMD-WGC,  
23 2020 WL 2089813, at \*8-10 (D. Nev. Apr. 30, 2020). Unfortunately, the Secretary has chosen to set  
24 forth two different interpretations of the signature gathering requirements as if the stay-at-home  
25 directives “had no impact on the rights of candidates and the people who may wish to vote for them”  
26 when it comes to the issue presented by the Fair Maps initiative and the Protect Our Girls initiative  
27 pending before this Court. *See e.g. Esshaki v. Whitmer*, No. 2:20-cv-10831-TGB, 2020 WL  
28 1910154, at \*1 (E.D. Mich. Apr. 20, 2020) (extending deadline to accept signatures).

In light of the Secretary's action, this Court should take immediate action to preserve Plaintiffs' constitutionally protected rights to circulate the Initiative, have it delivered to the Nevada Legislature for action, and then vote on the same. Otherwise, the Secretary's interpretation and application of NRS 295.056(2) will unduly burden Plaintiffs' constitutionally protected rights

## **II. STATEMENT OF FACTS**

### **A. The Initiative**

On March 11, 2020, Plaintiff filed Statutory Initiative Petition S0-04-2020 pursuant to Article 19, Section 2(3) of the Nevada Constitution. If the Initiative obtains the necessary signatures, it will be sent to the Nevada Legislature for action, and/or if necessary, placed on the ballot so voters can determine whether to amend Nevada law.

On March 12, 2020, the Secretary of State confirmed the Initiative filing and advised that the "deadline to challenge single subject, description of effect and matters relating thereto for this petition is April 1, 2020." No challenge was filed. In order to qualify the Initiative to be sent to the 2021 Nevada Legislature, and then, if necessary, placed on the ballot, the Initiative must obtain the signatures of registered voters that equal at least ten percent (10%) of the voters who voted at the last preceding General Election. Only registered voters of the county and petition district where the petition is circulated may sign the petition. Under Nevada law, Protect Our Girls have until November 18, 2020, to submit the necessary signatures to the counties for verification.

### **B. The Pandemic**

The COVID-19 pandemic ("Pandemic") has resulted in the near total cessation of public activity in Nevada. This necessary public health action is the result of the adoption of guidance by the federal government and adherence to legal directives issue by the Governor of the State of Nevada. On January 30, 2020, the World Health Organization declared that the novel coronavirus (COVID-19) constitutes a Public Health Emergency of International Concern. (Clement Decl., Ex. 4). On January 31, 2020, President Donald Trump suspended entry into the United States by all foreign nationals who had traveled to China in the past 14 days. *Id.* at Ex. 5. On February 24, 2020, President Trump asked Congress to allocate \$2.5 billion for a COVID-19 response. (*Id.*, Ex. 6.)

On February 25, 2020, the Director of the National Center for Immunization and Respiratory Diseases at the Centers for Disease Control and Prevention (“CDC”) announced that “[d]isruption to everyday life may be severe” as a result of the virus. *Id.* at Ex. 7. Regarding the spread, the Director stated that “[i]t’s not so much a question of if this will happen anymore but rather more of a question exactly when this will happen,” and called upon the American public to “work with us to prepare.” *Id.* On February 26, 2020, CDC officials stated that “[n]on-pharmaceutical interventions or NPIs will be the most important tools in our response to this virus,” and that such NPIs included “social distancing measures.” *Id.* at Ex. 8. On February 27, 2020, the CDC issued further guidance recommending that affected local communities practice “social distancing” measures, including reducing the frequency of large gatherings and limiting the number of attendees. *Id.* at Ex. 9. On March 13, 2020, the President declared a national state of emergency regarding COVID-19. *Id.* at Ex. 10.

On March 16, the President recommended broad social distancing guidelines for all Americans to “slow the spread” of COVID-19. (*Id.*, Ex. 11.) The guidance was initially for a fifteen-day effective period. (*Id.*) On April 2, 2020, President Trump extended the for thirty-days. (*Id.*, Ex. 12.) The CDC also issued guidance requesting that Americans engage in social distancing, including, but not limited to, maintaining a distance of six feet between persons. (*Id.*, Ex. 13.)

President Trump’s social distancing guidelines focus on reducing interpersonal contact of all Americans. His guidelines recommend the following actions, among others:

- Listen to and follow the direction of your **STATE AND LOCAL AUTHORITIES**
- **IF YOU FEEL SICK**, stay home. Do not go to work. Contact your medical provider.
- **IF SOMEONE IN YOUR HOUSEHOLD HAS TESTED POSITIVE** for the Coronavirus, keep the entire household at home. Do not go to work. Do not go to school. Contact your medical provider.
- **IF YOU ARE AN OLDER PERSON**, stay at home and away from other people.

- **IF YOU ARE A PERSON WITH A SERIOUS UNDERLYING HEALTH CONDITION** that can put you at increased risk..., stay home and away from other people. (*Id.* Ex 12 at 1)

The President’s guidance includes direction specifically for people that are healthy:

- Work or engage in schooling **FROM HOME** wherever possible.
- **AVOID SOCIAL GATHERINGS** in groups of 10 or more people
- Avoid eating and drinking at bars, restaurants, and food courts—**USE DRIVE-THRU, PICKUP, OR DELIVERY OPTIONS.** (*Id.* Ex 12 at 2)

On March 12, 2020 Governor Sisolak issued a Declaration of Emergency to facilitate the State’s response to the Pandemic. (*Id.*, Ex. 14.) Since issuing the Declaration of Emergency, Governor Sisolak has issued several legal directives consistent with the President’s guidelines and the CDC’s recommendations drastically limiting interpersonal contact in Nevada.

On March 31, 2020, Governor Sisolak issued a “stay at home” order. (*Id.*, Ex. 15.) In that order, Emergency Directive 010, the Governor extended his March 12 Declaration of Emergency through April 30, 2020. (*Id.*, Ex. 15 § 1.) He further ordered all Nevadans to stay in their home and not gather socially, subject to certain limited exceptions. (*Id.*, Ex 15 § 2.)

Although Emergency Directive 010 “does not prohibit individuals from engaging in outdoor activity, including without limitation, activities such as hiking, walking, or running,” individuals engaging in that activity must comply with Emergency Directive 007, maintain at least 6 feet distancing from other individuals, and not congregate in groups beyond their household members. (*Id.*, Ex. 15 § 6.) The Governor issued Emergency Directive 007 on March 24, 2020. (*Id.*, Ex. 16.) That order imposes certain social distancing requirements on Nevadans. (*Id.*) Specifically, it provides that, with the exception of persons residing in the same household, Nevadans must “to the extent practicable, abide by social distancing practices by maintaining a minimum six-foot distance between persons in public spaces, whether privately or publicly owned.” (*Id.*, Ex. 16 § 2.) It also requires that local governments limit Nevadans use of recreational spaces. (*Id.*, Ex. 16 § 3.) Individuals that violate the social distancing restrictions in the order are subject to criminal and civil penalties. (*Id.*, Ex. 16 §§ 5-6.)

1 In addition to the restrictions identified above, Governor Sisolak closed non-essential  
 2 business, including many retail establishments. (*Id.*, Ex. 17 §§ 1-3.) Governor Sisolak also ordered  
 3 the closure of state buildings. (*Id.*, Ex. 18 at 2.) Local governments have taken similar action and  
 4 agreed to use their enforcement authority to enforce the Governor's directives. (*Id.*, Ex. 19.) On  
 5 April 29, 2020, Governor Sisolak extended his stay at home order through May 15, 2020. (*Id.*, Ex.  
 6 20 § 8.) Only recently, did Governor Sisolak allow for gatherings, outside of casinos and  
 7 restaurants, where more than fifty (50) people could attend, and that number was set at 10% crowd  
 8 capacity or two hundred fifty (250) people.

9 **C. Signature gathering during the Pandemic**

10 The Governor's actions make it extremely difficult to collect signatures to qualify the  
 11 Initiative for the ballot in a traditional in-person manner. (Clement Decl. ¶¶ 7-14.)

12 Under normal circumstances, signatures are gathered using a variety of methods, all of which  
 13 require interpersonal contact inconsistent with the mandated social distancing that continues to  
 14 remain in effect, as directed by the Governor. (*Id.* ¶¶ 9-10.) Eligible voters are contacted door-to-  
 15 door at their homes, in front of retail establishments, restaurants and entertainment venues, or in or  
 16 around government buildings to solicit their interest in signing a petition. (*Id.* ¶ 10.) If, after a brief  
 17 conversation, an individual is interested in signing the petition, the person signs the same piece of  
 18 paper—most likely using the same pen—that others have signed. (*Id.*)

19 However, in the current environment, traditional signature gathering is extremely difficult,  
 20 and it is implausible that Protect Our Girls will meet NRS 295.056(2)'s submission deadline. (*Id.* ¶¶  
 21 8, 17.) Nevadans were ordered to stay at home almost immediately after Protect Our Girls file the  
 22 Initiative with the Secretary of State. (*Id.* ¶ 12; Ex. 15.) Most local government buildings remain  
 23 closed for a long period of time and continue to have restrictions on access. (Compl., Ex. 18 and  
 24 19.) Restaurants, bars and entertainments venues were all closed for in-person dining, drinking and  
 25 enjoyment. (Clement Decl. ¶ 12; Ex. 17 §§ 1-3.) Many retail establishments were closed and are  
 26 now providing curbside pick-up so to limit exposure and contact with others. (*Id.* at Ex. 17 §§ 1-3.)  
 27 Public events were canceled and continue to be cancelled *en masse*. (Clement Decl. ¶ 12.) The  
 28 directives at the beginning of this Pandemic even prohibited people from gathering in parks in



1 substantial number and individuals are still directed, to the extent practicable, to a six-foot social  
2 distancing limitation. (*Id.* at Ex. 13 § 6, Ex. 14 § 3.)

3 It is extremely challenging to gather physical ink signatures on hard copy documents in the  
4 time allotted as is traditionally done to qualify an initiative petition for the ballot. (*See* Clement  
5 Decl. ¶¶ 8-16.) Because of the Governor's directives, there are less people attending church, less  
6 people going to public and government buildings, and less people attending political events, where  
7 signature gathering has been traditionally accomplished.

8 **D. Nevada and other states have taken action to protect political speech in light of**  
9 **COVID-19**

10 On March 24, 2020, the Secretary announced that Nevada would conduct its June 9, 2020  
11 primary election by all mail out of concerns for the health and safety of voters and poll workers  
12 related to the Pandemic. In doing so, the Secretary authorized all Nevada voters to vote by absentee  
13 ballot and required that all registered voters in Nevada be mailed an absentee ballot. No voter will  
14 be required to request an absentee ballot to receive one. However, the Secretary also ordered that  
15 one polling place in each county be available to voters accommodate same-day voter registration, as  
16 well as assist voters who have issues with the ballot that was mailed to them.

17 56. In mandating that the primary be conducted by all mail, the Secretary did so despite  
18 the fact that an all-mail primary conflicts with certain elements of Nevada law, including NRS  
19 293.272, which requires that most Nevadans who register to vote by mail or computer must, for the  
20 first election in which the person votes at which that registration is valid, vote in person unless he or  
21 she has previously voted in the county in which he or she is registered to vote. NRS 293.272(1).

22 57. In addition to taking precautions to safeguard the primary election, the Secretary has  
23 suspended in-person transactions at her office and is accepting all election filings electronically.

24 58. The Governor called a special session of the Nevada Legislature which passed new  
25 legislation allowing the general election to be conducted by all mail-in ballots. The 2020 election  
26 will not be conducted by mail-in ballots, with the opportunity to vote in person during early voting  
27 and on election day.  
28



1           59. Other jurisdictions in the United States have responded to the Pandemic by changing  
2 election processes and rules for elections and initiatives to accommodate political speech in the  
3 midst of the Pandemic.

4           60. Ohio postponed their 2020 primary election until April 28, 2020. Ohio conducted the  
5 election almost exclusively by mail and voting centers only opened for people with disabilities to  
6 vote in person.

7           61. On March 25, 2020, a Virginia state court granted a preliminary injunction and  
8 ordered a reduction in the number of signatures needed for candidates to enter Virginia's primary  
9 election from 10,000 to 3,000. The court found that "the circumstances as they exist in the  
10 Commonwealth of Virginia and across the United States are not normal right now," and that the  
11 regulations requiring the signatures were not narrowly tailored because they "do[ ] not provide for  
12 emergency circumstances, like those that currently exist." *Faulkner v. Va. Dep't of Elections*, No.  
13 CL 20-1456, slip op. at 3 (Va. Cir. Ct. Mar. 25, 2020)

14           62. On April 17, 2020, the Massachusetts Supreme Judicial Court, Massachusetts'  
15 highest court, ordered three forms of relief for candidates seeking access to the ballot: first a  
16 reduction in the signature requirements by 50%, second an extension of the deadlines for filing of  
17 signatures, and third, a requirement that the Secretary of State accept electronic rather than wet-ink  
18 original signatures. The court agreed with petitioners that "these extraordinary times of a declared  
19 state of emergency arising from the COVID-19 pandemic create an undue burden on prospective  
20 candidate's constitutional right to seek elective office." *Goldstein v. Sec'y of Commonwealth*, 142  
21 N.E.3d 560, 564 (Mass. 2020)

22           On April 20, 2020, a federal court in Michigan granted a motion for preliminary injunction  
23 reducing the state signature requirement for a candidate to Michigan's Eleventh Congressional  
24 District after finding that "the State's actions in the form of enforcing both the Stay-at-Home Order  
25 and the statutory ballot-access requirements operate in tandem to impose a severe burden" on the  
26 Plaintiff. *Esshaki v. Whitmer*, No. 2:20-cv-10831-TGB, 2020 WL 1910154, at \*1 (E.D. Mich. Apr.  
27 20, 2020)

28

1 On June 8, 2020, the Secretary of State, and other county election officials, filed a Joint  
 2 Motion with *Fair Mapes* to enter a Consent Decree. The Court approved the Consent Decree on  
 3 June 9, 2020. *See Fair Maps Nevada v. Cegavske*, Case No. 3:2020-cv-00271 (ECF 48).

4 Additionally, after filing this pending action, the Secretary and all the County Election  
 5 Officials entered into a Consent Decree and filed a joint motion for Court approval.

#### 6 E. Nevada Secretary of State and the Initiative

7 On August 18, 2020 Protect Our Girls contacted the Secretary and made a request to  
 8 extend the time period to submit the Initiative for Verification. Clement Decl. Ex. 1. Protect  
 9 Our Girls requested that the Secretary extend the deadline for submission of the Initiative for  
 10 verification by at least six weeks. *Id.* By letter dated September 4, 2020, the Secretary denied  
 11 Plaintiff's requests. *Id.* at Ex. 2. Thereafter, on Protect Our Girls file the pending litigation  
 12 against the Secretary of State and all of Nevada's county election officials. On Monday  
 13 September 14, 2020, Protect Our Girls counsel sent the Attorney General's office an email  
 14 asking if counsel would be involved in this matter. In response, counsel for the Secretary of  
 15 State responded that he would accept service and he suspected "that we can agree to a proposed  
 16 consent decree and file a joint motion with the court." A consent decree was ultimately agreed  
 17 upon by the SOS and the County Election Officials and a Joint Motion was submitted to the  
 18 Court for approval.

### 19 III. LEGAL STANDARD

20 Federal Rule of Civil Procedure 65 governs the issuance of preliminary injunctions. Fed. R.  
 21 Civ. P. 65. To qualify for a preliminary injunction, a plaintiff must satisfy four requirements: "(1) a  
 22 likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) that the balance of  
 23 equities favors the plaintiff; and (4) that the injunction is in the public interest." *Paher*, 2020 WL  
 24 2089831, at \*4. "A plaintiff may also satisfy the first and third prongs by showing serious questions  
 25 going to the merits of the case and that a balancing of hardships tips sharply in plaintiff's favor." *Id.*  
 26 (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

1 **IV. ARGUMENT**

2 As articulated below, Plaintiffs have met their burden with respect to these factors and  
3 therefore a preliminary injunction should issue.

4 **A. Plaintiffs are entitled to a preliminary injunction because Plaintiffs will**  
5 **suffer irreparable harm if their constitutional rights are infringed.**

6 Precluding the delivery of the Initiative to the 2021 Nevada Legislature, and thereafter, if  
7 necessary, placing it on ballot for the next general election will unconstitutionally infringe Plaintiffs’  
8 right to engage in political speech by circulating and, in the case of individual voters, voting to  
9 amend existing state law. This infringement constitutes irreparable injury for which the issuance of  
10 a preliminary junction is appropriate. *See Sanchez v. Cegavske*, 214 F. Supp. 3d 961, 976 (D. Nev.  
11 2016) (citing *Cardona v. Oakland Unified Sch. Dist., Cal.*, 785 F. Supp. 837, 840 (N.D. Cal. 1992)  
12 (“Abridgement or dilution of a right so fundamental as the right to vote constitutes irreparable  
13 injury.”)). In the cases of impairment of constitutional rights, courts have regularly held that “[t]he  
14 loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes  
15 irreparable injury.” *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (citing *N.Y. Times Co. v.*  
16 *United States*, 403 U.S. 713 (1971)); *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir.  
17 2009). The Ninth Circuit has held that the harm is “particularly irreparable where . . . a plaintiff  
18 seeks to engage in political speech, as ‘timing is of the essence in politics’ and ‘[a] delay of even a  
19 day or two may be intolerable.’” *Klein*, 584 F.3d at 1208 (second alteration in original) (quoting  
20 *Long Beach Area Peace Network v. City of Long Beach*, 522 F.3d 1010, 1020 (9th Cir. 2008),  
21 amended and superseded, 574 F.3d 1011 (2009)). Here, COVID-19 and the related social distancing  
22 measures imposed by federal, state and local governments make it highly unlikely that Protect Our  
23 Girls will be able to satisfy Nevada’s statutory requirements for qualifying the Initiative to be  
24 delivered to the 2021 Nevada Legislature, and if necessary, placed on the next general election  
25 ballot. As Melissa Clement states in her declaration, during the beginning of the Pandemic, and to  
26 an extent today, it was, and is not feasible to gather ink signatures on a petition circulated by hand in  
27 an environment where interpersonal contact is generally advised against and in many cases  
28 prohibited. (Clement Decl. ¶¶ 8-16.) Any attempt to gather signatures would subject petition

1 circulators and the general public to a higher health risk and expose circulators to possible  
2 government fines.

3 Additionally, as shown in the *Fair Maps* litigation, voters were particularly likely in the  
4 current environment to avoid petition circulators during the beginning of this Pandemic, and such  
5 reluctance is still found today as Protect Our Girls seeks to obtain signatures. *See* Clement Decl.  
6 ¶15. This is especially true for those at heightened risk for COVID-19 complications. *See* Clement  
7 Decl. Ex. 21.

8 The difficulty of gathering the requisite signatures during the early stages of the Pandemic  
9 and the environment Nevadans find themselves today is exacerbated by the fact that there is no clear  
10 indication when the social distancing mandates will be lifted—to say nothing of when Nevadans will  
11 feel comfortable leaving their homes and engaging with signature gatherers. The Governor has  
12 extended his own stay-at-home order twice already, and current directives will impose serious  
13 restrictions of large gatherings within the State. Consequently, it is unlikely that social distancing  
14 will be eased in time for Plaintiffs to qualify the Initiative to be sent to the Nevada Legislature in the  
15 traditional manner by November 18, 2020. Clement Decl. 16-17.

16 In light of these facts, requiring Protect Our Girls to gather the necessary signatures by  
17 November 18, 2020 is implausible. The Secretary of State, and all the Nevada County Officials  
18 therefor have agreed to extend the time until December 29, 2020 and entered into a Consent Decree  
19 with Plaintiffs setting forth this new deadline date.

20 Therefore, as a constitutionally protected activity, the State's election official's change in  
21 position and now present refusal to extend the time as it did in the *Fair Maps* litigation, and  
22 previously agreed pursuant to a consent decree in this matter, will therefore cause irreparable harm.  
23 There is no remedy available to give effect to these rights or compensate Plaintiffs for their loss. An  
24 injunction preventing the harm from occurring is the only suitable remedy.

25 **B. Plaintiffs are entitled to a preliminary injunction because they are likely**  
26 **to succeed on the merits of their claims.**

27 Plaintiffs have a likelihood of success on at least one, if not all, of their claims against  
28 Defendants. Plaintiffs allege six (6) claims. ECF 1 ¶¶ There are six claims relating to the

1 constitutionality of the Secretary’s failure to extend the deadline for submitting the Initiative for  
 2 verification no later than November 18, 2020. *Id.*

3 Plaintiffs’ constitutional claims allege that the Secretary’s actions violate their right to  
 4 engage in political speech by preventing them from circulating and qualifying the Initiative for  
 5 delivery to the Nevada Legislature and further prevents them from voting on the Initiative in the  
 6 during the first general election should the Nevada Legislature not amend the statute. Plaintiffs  
 7 claim that these actions violate the First and Fourteenth Amendments to the U.S. Constitution and  
 8 various provisions of the Nevada Constitution, including Article 9, Section 1 (right to speech),  
 9 Article 19, Section 2(1) (right to circulate an initiative petition), and Article 2, Section 1 (right to  
 10 vote). (*Id.*)

11 Federal courts evaluating challenges to laws that regulate the election process apply the  
 12 framework from *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428  
 13 (1992). Under *Burdick*’s balancing and means-end fit framework, strict scrutiny is applied when the  
 14 First or Fourteenth Amendment rights are subject to “‘severe’ restrictions.” *Pub. Integrity All., Inc.*  
 15 *v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016) (quoting *Burdick*, 504 U.S. at 434).  
 16 However, “when a state election law provision imposes only ‘reasonable, nondiscriminatory  
 17 restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important  
 18 regulatory interests are generally sufficient to justify’ the restrictions.” *Id.*

19 i. **The challenged requirements impose a severe burden on the Plaintiffs’**  
 20 **constitutional rights.**

21 The challenged requirements impose a severe burden on Plaintiffs’ First Amendment Rights  
 22 by impeding their ability earn a place on the ballot. Indeed, the challenged requirements prevent  
 23 Plaintiffs and other Nevada voters from voting on the Initiative during the 2022 general election.  
 24 These restrictions are undoubtedly severe and therefore strict scrutiny applies to the challenged  
 25 restrictions. *Angle v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012). The United States Supreme Court  
 26 has held that the circulation of ballot petitions is “core political speech” where First Amendment  
 27 protection is at its “zenith.” *Meyer v. Grant*, 486 U.S. 414, 421-422, 425 (1988). The Nevada  
 28 Supreme Court has clarified that Nevadans’ right to engage in political speech as articulated by the

1 Nevada Constitution, including the right to circulate a ballot petition, is subject to First Amendment  
 2 analysis. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 100 P.3d 179, 187 (Nev.  
 3 2004) (concluding that the protections afforded by Article 1, Section 9 and Article 19, Section 2 are  
 4 subject to First Amendment analysis).

5 In light of the restrictions imposed by the government in response to the Pandemic, requiring  
 6 that the Initiative be submitted for verification no later than November 18, 2020 cannot withstand  
 7 strict scrutiny.

8 As Melissa Clement points out in her declaration, in the current environment traditional  
 9 signature gathering is extremely difficult and it is implausible that Plaintiff will meet NRS  
 10 295.056(2)'s submission deadline. (Clement Decl. ¶¶ 8-16.) Nevadans have been ordered to stay at  
 11 home, and most government buildings are closed. *Id.* at 18. Restaurants, bars and entertainments  
 12 venues are closed, with major events being cancelled. Clement Decl. ¶ 12, Ex. 17. Many retail  
 13 establishments are closed. *Id.* Ex. 17. Public events have been canceled en masse. *Id.* at ¶ 12.  
 14 These are all places Protect Our Girls had intended to send circulators. *Id.* ¶ 23.

15 What's more, individuals must adhere to the extent practicable to a six-foot social distancing  
 16 limitation and wear some type of mask over their mouth. *Id.* at Ex. 14. Thus, as Melissa Clement  
 17 points out, even if he wanted to circulate the Initiative, it would be practically impossible to do so  
 18 without breaching the six-foot social distancing limit and having to communicate with the restriction  
 19 of having to wear a face covering. *Id.*

20 Even if the Initiative could somehow be circulated at a distance, voters would be reticent to  
 21 sign. As Robert MacDonald stated in the Fair Maps action, he wants to sign the Initiative but cannot  
 22 do so because he is strictly adhering to social distancing protocols. Clement Decl. Ex. 21.<sup>1</sup>

23 The combination of the closure of public spaces, the prohibition on public gatherings, and the  
 24 requirement to maintain social distancing makes it highly unlikely Protect Our Girls will qualify the  
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26 <sup>1</sup> The fact that Mr. McDonald may not be willing to sign this Initiative is immaterial, but what is  
 27 important is that gathering signatures for any other initiatives has been difficult, if not impossible,  
 28 because of the circumstances the Nevada voters find themselves today.

Initiative for the ballot. Complicating matters is the fact that, as explained above, it is not clear when these restrictions will be lifted since the Governor's directive has only recently allowed for an increase in outside public gatherings. Even if the social distancing restrictions were eased today, it is unlikely Plaintiffs would have a reasonable opportunity to qualify the Initiative for the ballot.

Consequently, voters like Melissa Clement who has already signed the Initiative and want to vote on it if it is placed on the 2020 general election ballot will not be able to do so.

ii. **The State's interest in preventing fraud and ensuring the Initiative is properly verified does not justify the burden imposed by the challenged restrictions.**

There is no government interest that justifies the near-total abridgment of Plaintiffs' constitutional rights in this election cycle.

a. **The verification deadline**

As to the State's interest in ensuring that the Initiative is properly verified, that interest too can be satisfied through a means that does not prevent Plaintiffs from exercising their constitutional rights. Submitting the Initiative for verification on December 29, 2020 will afford the county clerks thirty-five (35) days to verify the Initiative and allow a challenged to be filed and heard by the Courts. *See* NRS 295.061(2). The Secretary of State and Nevada's election officials have already consented that there will be enough time for this process to take place and still be able to present this Initiative to the 2021 Nevada Legislature. In fact, the Nevada Constitution contemplated that the Initiative could be filed with the Secretary of State no later than 30 days before the Legislative session which would be January 2, 2021. Allowing Plaintiffs additional time to secure the requisite signatures will not prevent the county clerks from having the time they need to verify the Initiative, nor does it preclude any challenger from filing a challenge with the Court. This entire process can be accomplished in less than the time allotted in the Nevada Constitution.

iii. **Other courts that have considered the impact of COVID-19 have taken action similar to what Plaintiffs request here.**

In *Esshaki v. Whitmer*, the District Court for the Eastern District of Michigan enjoined several of Michigan's requirements for signature gathering for candidate ballot access as severe burdens unsupported by a compelling state interest in light of the COVID-19 pandemic. In doing so,



1 the court stated that the State’s social distancing order “ha[ve] pulled the rug out from under  
2 [candidates’] ability to collect signatures,” have “shuttered” the locations and events at which  
3 signatures are normally gathered, leave only “prohibitively expensive” means to obtain signatures.  
4 *Esshaki*, 2020 WL 1910154, at \*6. The court stated further that “[a]bsent relief, Plaintiff[ ] lack[s] a  
5 viable, alternative means to procure the signatures he needs” and thus “he faces virtual exclusion  
6 from the ballot.” *Id.*

7 The court then addressed COVID-19 specifically, noting that it “ha[d] little trouble  
8 concluding that the unprecedented—though understandably necessary—restrictions on daily life . . .  
9 when combined with the ballot access requirements . . . have created a severe burden on Plaintiff’s  
10 exercise of his free speech and free association rights under the First Amendment, as well as his due  
11 process and equal protection rights under the Fourteenth Amendment—as expressed in his effort to  
12 place his name on the ballot for elective office.” *Id.* (footnote omitted).

13 The court also rejected the State’s argument that its interest in ensuring that candidates have  
14 sufficient support to qualify for the ballot justified the signature requirement at issue. The court  
15 concluded that the social distancing restrictions dictated by COVID-19 “effectively halted signature-  
16 gathering by traditional means, reducing the available time prescribed by the Michigan Legislature  
17 to gather one thousand signatures by twenty-nine days.” *Id.* at \*7. The remedy ordered by the court  
18 was to “reduce the signature requirement to account for the lost twenty-nine days.” *Id.* The court  
19 entered an injunction that (1) reduced by half the number of signatures required for ballot access, (2)  
20 extended the deadline to submit signatures, and (3) required the state to implement a “user-friendly”  
21 system to “permit signatures to be gathered through the use of electronic mail” and to permit the  
22 signature to be “appropriately witnessed . . . through digital means.” *Id.* at \*10.

23 The *Esshaki* court is not the only one to take such action. In *Faulkner*, a Virginia state court  
24 entered an injunction reducing the signature requirement for candidates to qualify for the ballot in  
25 light of COVID-19, concluding that Virginia’s signature requirement as applied to the plaintiff-  
26 candidate infringed on his First Amendment rights. *Faulkner*, slip op. at 2-4 (attached as Ex. 24 to  
27 the Complaint).

1 In *Democratic National Committee v. Bostelmann*, the District Court for the Western District  
 2 of Wisconsin extended the deadline to request absentee ballot, the deadline to postmark absentee  
 3 ballot to election day, and deadline for absentee ballots to be received to six days after election, in  
 4 light of severe burdens caused by COVID-19 and the undue burden otherwise applicable statutory  
 5 requirements worked on the plaintiffs' constitutional rights. No. 20-cv-249-wmc, 2020 WL 1638374  
 6 at \*22 (W.D. Wis. Apr. 2, 2020).

7 This Court should reach the same conclusion that it reach in the Fair Maps case as well as  
 8 what other courts have reached. The unprecedented restrictions on social interaction dictated by  
 9 COVID-19 and related government guidance and prohibitions makes the State's action to prevent  
 10 Plaintiffs from exercising their constitutional rights untenable and unconstitutional.

11 **C. Plaintiffs are entitled to a preliminary injunction because the balance of**  
 12 **equities and public interest favor Plaintiffs.**

13 Where the government is a party, the Court must consider the balance of equities and public  
 14 interest in relation to the issuance of a preliminary injunction together. *Drakes Bay Oyster Co. v.*  
 15 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). In  
 16 doing so, the Court must "balance the interests of all parties and weigh the damage to each."  
 17 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (citation omitted).

18 In this case, the balance of equities and the public interest demand that a preliminary  
 19 injunction issue. In the absence of action by this Court, Plaintiffs' constitutional rights will be  
 20 abridged, irreparably harming Plaintiffs who will have no reasonable recourse in the absence of  
 21 injunctive relief. The harm caused will damage not only Plaintiffs' constitutional rights but also the  
 22 integrity of Nevada's political process to the detriment of all Nevadans. In light of the fact that the  
 23 interest of the State at stake can be satisfied through less restrictive means, there is no reason not to  
 24 grant the relief requested. *See Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) ("[T]he  
 25 loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes  
 26 irreparable injury." (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))); *Warsoldier v. Woodford*,  
 27 418 F.3d 989, 1001 (9th Cir. 2005) (recognizing that a "colorable First Amendment claim" is  
 28 "irreparable injury sufficient to merit the grant of relief").

1 While the State may have an interest in the orderly conduct of elections and of preventing  
2 ballots from being crowded with non-serious initiatives, these interests are not undermined by the  
3 relief sought by Plaintiffs.

4 **V. CONCLUSION**

5 In light of the foregoing, the Court should grant Plaintiffs' request for a preliminary  
6 injunction on an expedited basis. COVID-19 and social distancing restrictions make it highly  
7 unlikely Plaintiffs will be able to exercise their constitutional rights to engage in political speech,  
8 place the Initiative before the Nevada Legislature and then on the ballot, and vote on measures of  
9 their choices. Consequently, the Secretary's interpretation of NRS Chapter 295 in the current  
10 climate and the Secretary's failure to authorize an extension of time as it did in the Fair Maps action  
11 is an unconstitutional violation of Plaintiffs' rights. This Court must take action to preserve those  
12 rights and prevent Plaintiffs from suffering irreparable harm.

13 DATED: October 20, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of The O'Mara Law Firm, P.C. and on this date, the foregoing document was filed electronically *via* the Court's ECF system which provided notification of such filing to counsel of record for all parties.

Dated: October 20, 2020

\_\_\_\_\_  
/s/ Bryan Snyder  
BRYAN SNYDER